**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| **In The Matter of** | |
| **APPLICATION OF AMERITECH MICHIGAN PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996 TO PROVIDE IN-REGION, INTERLATA SERVICES IN MICHIGAN** | **CC Docket No. 97-1** |

# COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Public Notice, DA 97-242 (released February 3, 1997), hereby submits the following comments in support of the "Motion to Strike" filed by the Association for Local Telecommunications Services ("ALTS") in the captioned docket on February 3, 1997.[2] In its Motion to Strike, ALTS seeks an order preventing Michigan Bell Telephone Company d/b/a

[1] A trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members are also among the many new market entrants that are or will soon be offering local exchange and/or exchange access services.

[2] Letter of Richard J. Metzger, General Counsel, Association for Local Telecommunications Services, to Regina M. Keeney, Chief, Common Carrier Bureau, Federal Communications Commission (dated February 3, 1997) ("ALTS Motion").

Ameritech Michigan ("Ameritech") from relying upon the "Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996" ("Interconnection Agreement") with AT&T Communications of Michigan, Inc. ("AT&T/Michigan") to support its application ("Application") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[3] as amended by Section 151 of the Telecommunications Act of 1996 ("1996 Act")[4] to provide, through its affiliate, Ameritech Communications, Inc. ("AC"), interLATA service within the in-region State of Michigan.

TRA concurs with ALTS' view that Ameritech should not be permitted to rely upon an interconnection agreement which has not been (and cannot timely be) submitted to the Commission and may not have been approved by the Michigan Public Service Commission ("MPSC") to satisfy the Section 271(d)(3)(A)(i) requirement that the Section 271(c)(2)B) "competitive checklist" must have been fully implemented.[5] TRA, accordingly, strongly supports ALTS' request that the AT&T/Michigan Interconnection Agreement be stricken from the Ameritech Application, or at a minimum, that a "show cause" order be issued requiring Ameritech to demonstrate why such action should not be taken.

As detailed by ALTS, the short history of the Ameritech Application is somewhat painful. Ameritech included a version of the AT&T/Michigan Interconnection Agreement in its initial Application filed with the Commission on January 2, 1997. As described by Ameritech, that AT&T/Michigan Interconnection Agreement, which was filed with the MPSC on December

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[3] 47 U.S.C. § 271(d).

[4] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

[5] 47 U.S.C. §§ 271(c)(2)B)271(d), 271(d)(3)(A)(i).

26, 1996, was predicated on "a final arbitration decision" entered by the MPSC on November 26, 1996.[6]

Two weeks later, Ameritech supplemented its Application with, among other things, "the approved Ameritech Michigan/AT&T Interconnection Agreement filed by Ameritech Michigan with the MPSC on January 16, 1997."[7] This version of the AT&T/Michigan Interconnection Agreement contained a number of revised schedules, not the least of which was a "revised pricing schedule conformed to MPSC Arbitration Order dated November 26, 1996."[8] As explained by Ameritech:

> [T]he AT&T/Ameritech Michigan Interconnection Agreement that Ameritech filed on January 2, included certain pricing terms to which we believe AT&T had agreed prior to the January 2 filing. . . . Subsequent to Ameritech Michigan's filing on January 2, 1997, however . . . AT&T advised that the pricing modifications in the December 26, 1996 agreement were the product of a misunderstanding. In addition, MPSC Staff has indicated that, insofar as these negotiated prices were not considered in the AT&T/Ameritech Michigan arbitration order, they cannot yet be part of the AT&T/Michigan Interconnection Agreement approved on November 26, 1996. In light of these developments, Ameritech Michigan filed the AT&T/Ameritech Michigan Interconnection Agreement on January 16, 1997 that reflects only the MPSC arbitration decision . . .[9]

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[6] Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, p. 7 (January 2 1997).

[7] Supplemental Filing in Connection with Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act, Vol. 1.1, Listing of Materials Included in Supplemental Filing not in Initial Filing (January 17, 1997).

[8] Letter of John T. Lenahan, Assistant General Counsel, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission, transmitting Supplemental Filing in Connection with Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act, p. 2 (dated January 17, 1997).

[9] Id.

It now turns out that the AT&T/Michigan Interconnection Agreement filed on January 17, 1997, was not the final rendition of Ameritech's access and interconnection arrangement with AT&T/Michigan. As reported by ALTS, Ameritech has filed yet another AT&T/Michigan Interconnection Agreement with the MPSC which "supersedes all previously filed agreements."[10] This new version of the AT&T/Michigan Interconnection Agreement has yet to be submitted to the FCC. Moreover, it is not at all clear that this latest rendition of the AT&T/Michigan Interconnection Agreement has been or will be approved by the MPSC.

As ALTS points out, the AT&T/Michigan Interconnection Agreement is central to Ameritech's claim that it has made the showings required by Section 271(d)(3) which must precede a grant of authority to Ameritech to provide interLATA service within the in-region state of Michigan. Indeed, even under Ameritech's relatively relaxed interpretation of "competitive checklist" compliance, the Ameritech Application fails to satisfy the "competitive checklist" without the AT&T/Michigan Interconnection Agreement. As candidly explained by Ameritech:

> The AT&T Agreement "includes" and makes available to AT&T each of the checklist items. And it does so in a manner that fully complies with the applicable requirements of Sections 251 and 252(d) and the Commission's regulations. In particular, it makes available all of the elements, products and services identified in the Commission's Local Competition First Report and Order, in the manner specified therein. . . . The Brooks Fiber, MFS and TCG Agreements contain "most favored nation" clauses ("MFN Clauses"). . . . Pursuant to these MFN clauses in their Agreements, Brooks Fiber, MFS and TCG have available to them today all elements, products and services covered by the AT&T Agreement

[10] Letter of Edward R. Becker, Attorney for Ameritech Michigan to Dorthy F. Wideman, Executive Secretary, Michigan Public Service Commission, p. 1 (dated January 29, 1997), attached hereto with letter of Phillip S. Abrahams, Senior Attorney, AT&T, to Ed Wynn, Vice President and General Counsel, Ameritech Industry Information Services, as Exhibit 1.

at the rates and on the terms and conditions specified in that Agreement.[15]

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[15] In the event the Commission were to conclude that the Brooks Fiber, MFS and TCG Agreements may be used to satisfy the checklist requirements only as to those items actually furnished to those carriers, the AT&T Agreement "fills the gap" (i.e., those items that have not been ordered and taken by one or more of these carriers) and completes Ameritech's checklist compliance. Subsection 271(c)(2)(B) specifies that a BOC "meets the requirements" of that subsection so long as the "[a]ccess and interconnection provided [pursuant to (c)(1)(A)]" -- i.e., to Brooks Fiber, MFS and TCG -- "or generally offered" by the BOC "includes each of the" checklist items. The AT&T Agreement is such a general offering. It includes and makes available all of the checklist items, at rates and on terms and conditions that comply with both Sections 251 and 252(d) as well as Section 271(c)(2)(B); it is publicly available . . . and . . . all of its "terms and conditions" are "available to competitors" anywhere in the state."[11]

It is not surprising then, as ALTS reports, that Ameritech makes reference to the AT&T/Michigan Interconnection Agreement nearly 400 times in its Application and more than 100 times in the Brief supporting that Application.[12] The problem is that all such references are to a document which having itself superseded its predecessor, has now itself been superseded.

Section 271(c)(1)A) recognizes only "binding agreements that have been approved under section 252."[13] Section 252(e)(1) mandates that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission," which

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[11] Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan at 22.

[12] ALTS Motion at 1.

[13] 47 U.S.C. § 271(c)(1)(A).

State commission "shall approve or reject the agreement."[14] The AT&T/Michigan Interconnection Agreement which is currently on file with the Commission as part of the Ameritech Application is neither "binding" nor "approved." The superseding document, which is not yet on file with the Commission, may not be "approved," and may never be "approved."

The Commission has a statutory obligation to the American public to withhold from a Bell Operating Company ("BOC") the authority to originate (or in the case of inbound or private line service, terminate) traffic in areas in which the BOC provides local exchange/exchange access service as an incumbent local exchange carrier ("LEC") until the Commission has made an affirmative determination that, among other things, "the petitioning [BOC] has met the requirements of subsection [271](c)(1) and . . . with respect to access and interconnection provided pursuant to subsection [271](c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B)." Here the Commission cannot make that affirmative determination because one of the principal bases for such a finding is akin to shifting sand. Not only does the AT&T/Michigan Interconnection Agreement periodically change, but the rendition of the access and interconnection arrangement currently on file with the Ameritech Application has been superseded by an undisclosed newer version.

An applicant that comes before the Commission seeking authority to engage in an activity overseen by the Commission has certain responsibilities, both to the Commission and to the public, including competitors, as well as consumers. Chief among these duties is the responsibility to ensure that information submitted to the Commission as part of an application

[14] 47 U.S.C. § 252(e)(1).

for Commission authority is -- and remains -- complete, accurate and up to date.[15] A serious commitment on the part of applicants for Commission authority to confirm the accuracy and completeness of their applications is critical to the Commission's ability to engage in reasoned decision-making; reasoned decision-making is obviously undermined if agency actions are predicated on flaws or deficient records. And just as Commission analysis would be hindered by incomplete, inaccurate or stale data, so to would the right of the industry and the consuming public to participate in the Commission's decisional processes be seriously undermined.

It belabors the obvious to suggest that the Commission's actions with respect to the first BOC application for in-region, interLATA authority will be precedent setting. Accordingly, the manner in which the Commission treats the Ameritech Application is critical not only for the Ameritech Application, but for the other 50 or so BOC Section 271 in-region applications that will soon follow. Whatever rules and guidelines are established with respect to the Ameritech Application will guide other BOCs in the preparation and prosecution of their Section 271 applications for in-region, interLATA authority. The message here that something less than full compliance with the requirements of Section 271 will suffice will be heard loud and clear and, indeed, will haunt the Commission for the remainder of the in-region certification process. No less telling will be the message that a full and complete showing is absolutely necessary.

In critical respects, it is the integrity of the Commission's processes that is at play here. The Ameritech Application is an extraordinarily high visibility matter. Allowances made for inaccurate, incomplete or out-dated evidentiary showings will cast doubt on the *bona fides*

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[15] *See, e.g.*, 47 C.F.R. § 1.65.

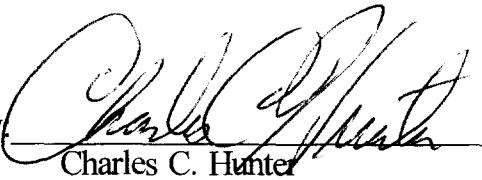
of the entire Section 271 review process. As ALTS correctly notes, industry, consumer and other interested parties cannot be expected to comment intelligently on an application supported by materials which have been superseded by materials not yet filed with the Commission. Applications granted without full public comment will also be the subject of more questions and challenges.

The Commission should not permit actions by Ameritech, whether inadvertent or intentional, to subvert its evaluative processes. Indeed, while TRA endorses the measured relief sought by ALTS, it urges the Commission to consider sanctions if it determines that the flaws in the Ameritech Application were occasioned by other than mere inadvertence. Absent such a determination, Ameritech should be permitted to prosecute its Application without benefit of the AT&T/Michigan Interconnection Agreement or, if it so elects, to withdraw the Application. In the event that the Ameritech Application is withdrawn, however, Ameritech should be admonished not to refile it until it has confirmed the Application's accuracy and completeness.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the Motion of the Association of Local Telecommunications Services to strike the "Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996" with AT&T Communications of Michigan, Inc. from the application of Michigan Bell Telephone Company d/b/a Ameritech Michigan to provide, through its affiliate Ameritech Communications, Inc., interLATA service within the in-region State of Michigan.

Respectfully submitted,

**TELECOMMUNICATIONS RESELLERS ASSOCIATION**

By: 

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February 5, 1997

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# EXHIBIT I

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January 29, 1997



**Hand Delivery**

Ms. Dorothy F. Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909

Re: Petition for Arbitration of Interconnection Terms, Conditions and Prices from AT&T Communications of Michigan, Inc. Case No. U-11151 and U-11152

Dear Ms. Wideman:

Enclosed for filing in the above-captioned case are an original and 15 copies of the fully executed Interconnection Agreement between AT&T Communications of Michigan, Inc. and Ameritech Michigan. The Agreement has been executed by Mr. Neil Cox on behalf of Ameritech Michigan and by Ms. Bridget Manzi on behalf of AT&T. This Interconnection Agreement supercedes all previously filed agreements.

As indicated in the attached letter dated January 27, 1997, AT&T has relabeled the price for unbundled local switching ports to a "Michigan port." Because Ameritech Michigan understands there to be no legal difference between the two, based on the Commission's prior orders, Ameritech Michigan has no objections to this change.

In accordance with the express terms of the Commission's November 26, 1996 Order, Ameritech Michigan understands that the enclosed Interconnection Agreement has been approved by the Commission pursuant to that Order as of November 26, 1996. Ameritech Michigan further understands that the enclosed executed Interconnection Agreement will be made available for public inspection and to other telecommunications carriers pursuant to Sections 252(h) and (i) of the Telecommunications Act of 1996.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Edward R. Becker

ERB:jrb
Enclosure

cc: Arthur Levasseur, Esq. (w/ encl) (Agreement to follow under separate cover)
Larry Salustro, Esq. (w/ encl) (Agreement to follow under separate cover)

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Philip S. Abrahams
Senior Attorney

13th Floor
227 West Monroe Street
Chicago, Illinois 60606
312 230-2846

January 27, 1997

**HAND DELIVER**

Mr. Ed Wynn
Vice President and General Counsel
Ameritech Information Industry Services
250 North Orleans, Floor 3
Chicago, IL 60654

re: AT&T/Ameritech Interconnection Agreement
State of Michigan

Dear Ed:

As you are aware, AT&T and Ameritech have been unable to agree upon the appropriate prices to be included in the Pricing Schedule to the Interconnection Agreement. Specifically, as outlined in our letter to the Michigan Public Service Commission on January 17, 1997, and our letter to your counsel in Michigan on January 17, 1997, we do not agree with your attempt to substitute the pricing for a "port" under Michigan law as established in Case No. U-11156 for unbundled local switching. We believe that such action is inconsistent with the arbitration decision. Also, the parties are unable to reach agreement as to the appropriate proxy charges for Shared Transport to be incorporated from Ameritech's access tariffs.

In order for AT&T to proceed with its plans to enter the local market in Michigan, AT&T needs to have an executed Interconnection Agreement with Ameritech. Therefore, to prevent further delays in our business plans, we are executing a modified version of the Interconnection Agreement delivered to me by Ron Lambert on January 15, 1997, which has been represented to be the same as the version submitted by Ameritech to the Commission on January 16, 1997. The only changes to your January 16th filing were made to the Pricing Schedule to reflect the appropriate prices for unbundled Local Switching and ports. These changes are consistent with Ameritech's Submission to the Commission on January 21 in Case U-11280.

Although AT&T has agreed to execute the Interconnect Agreement, by such action AT&T is not waiving its right to challenge Ameritech's interpretation of "Shared Transport," the arbitration decision of the Commission, or any other aspect of the Agreement that AT&T believes is contrary to the Telecommunications Act of 1996. As provided in Section 29.3 of the Agreement, should the arbitration award be modified as a result of an appeal, or subsequent order of the Commission, the Agreement will be modified accordingly.

Enclosed are five executed copies of the Interconnection Agreement which have been executed on behalf of AT&T by our Vice President, Bridget B. Manzi. Please have the Agreement executed on behalf of Ameritech and return two fully executed copies to me. You should also file one executed copy with the Commisaion. The Effective Date should be inserted as the date of execution by Ameritech.

Please immediately advise me if the Interconnection Agreement, as executed by AT&T, is not acceptable to Ameritech.

Sincerely,

Phillip S. Abrahams

cc: Larry Sahustro
Kent Pfleiderer

# CERTIFICATE OF SERVICE

I, Jeannine Greene Massey, hereby certify that copies of the foregoing document were mailed this 5th day of February, 1997, by United States First Class mail, postage prepaid, to the following:

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The Association for Local
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